

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 813 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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HEIRS OF KOLI DHARSI NEMA

Versus

KOLI HANSJI VELA

Appearance:

Mr.B.B.Oza for the appellants.

Mr.P.P.Kasvala for MR BC DAVE for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/08/2000

ORAL JUDGEMENT

This is Plaintiffs' First Appeal. This Appeal is pending since 1980. Mr.B.B.Oza appearing for the appellants has submitted that the original plaintiff had actually died and his legal representatives have been brought on record. Although he is representing the legal

representatives, the legal representatives have not responded to his letters. He has further submitted that the possession of the property in question rests with the respondents. He has also submitted that in absence of any response from the legal representatives of the original plaintiff and the existing appellants herein, he has no instructions to proceed with this matter and has also submitted that the appellants may have lost interest in this matter. The trial court had dismissed the Suit with regard to the possession of the property in question and Issues Nos.1 to 4 and 6 were decided against the plaintiff and answered in negative.

I have gone through the reasoning on the basis of which the findings have been arrived at by the trial court and find that the findings on these issues have been correctly arrived at and the plaintiffs failed to prove their entitlement to possession for recovery of mesne profit or that they were exclusive owners of the property in question or that the defendants had illegally and unauthorisedly taken over the possession.

So far as Issue No.5 is concerned, I find that the defendants have been able to prove that the Suit property originally belonged to the ancestor Vela Rana and, thereafter, it has been in their exclusive possession. Hence it is found that Issue No.5 has also been correctly answered in favour of the defendants.

Issue No.6 was that Suit was barred by res judicata and on this aspect of the matter, the trial Court, after narrating the facts with regard to the previous litigation, has fond that in the Regular Civil Suit No.8/70 the competent Civil Court had not given its decision on merits and as per the certified extract of the Roznama, the Suit was withdrawn with requisite permission and, therefore, the finding was correctly arrived at that the suit was not barred by res judicata. Learned counsel appearing for the respondents have failed to show as to how the Suit is said to be barred by res judicata.

In any view of the matter, even if the Suit is not barred by res judicata, the Suit has to be dismissed in view of the findings on other Issues, as aforesaid.

This Court does not find that the impugned judgment and decree dated 21.7.79 passed by Civil Judge (S.D.), Palanpur in Special Civil Suit No.54 of 1976 is wrong either on facts or in law. This Appeal has no force and the same is hereby dismissed. In the facts and

circumstances of the case, no order as to costs.

(M.R.Calla,J)